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04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 MARK WAYNE CLARK,) CASE NO. C04-1647-JCC-MAT
07 Plaintiff,)
08 v.)
09 DEAN MASON, et al.,) ORDER RE: MOTIONS
10 Defendants.)
11 _____)

12 Plaintiff, a Washington state prisoner, is proceeding *pro se* and *in forma pauperis* in this
13 action brought pursuant to 42 U.S.C. § 1983. Currently before the court are defendants' motion
14 for a protective order (Dkt. #204), and three motions filed by plaintiff: a motion for stenographic
15 services (Dkt. #221), a motion for reconsideration (Dkt. #220), and a motion for "emergency
16 court intervention." (Dkt. #224). In addition, plaintiff recently filed a motion to compel
17 discovery, which is noted for consideration on February 16, 2007.¹ (Dkt. #226). The parties have
18 filed responses to each of these motions, with the exception of plaintiff's emergency motion, to
19 which defendants have not filed a response.² Having considered the motions, responses, and the

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21 ¹ Plaintiff's motion to file an overlength brief in support of the motion to compel (Dkt.
#228) is hereby GRANTED.

22 ² The emergency motion was noted by plaintiff for consideration on the date that it was
filed, January 22, 2007. (Dkt. #224). The Local Rules do not provide a specific noting date for

01 balance of the record, the court does hereby find and ORDER as follows:

02 (1) In his motion for reconsideration, plaintiff seeks a further extension of time to file
03 a response to defendants' pending motion for summary judgment, and also seeks an order un-
04 sealing certain exhibits filed by defendants in support of their motion for summary judgment.
05 (Dkt. #220). Defendants filed their summary judgment motion on December 13, 2006, and it was
06 originally noted for consideration on January 5, 2007. (Dkt. #208). The Order challenged by
07 plaintiff in his motion for reconsideration was issued by the court on December 27, 2006. (Dkt.
08 #213). In that Order, the court granted plaintiff a 70-day extension of time, which was half of the
09 amount of time requested by plaintiff (*see* Dkt. #212), and set defendants' motion for
10 consideration on March 12, 2007.

11 Plaintiff now asserts that in order to properly respond to defendants' pending motion for
12 summary judgment, he must transcribe audiotapes of the depositions he conducted, which is a
13 slow process. Plaintiff asks that the due date for his response to defendants' summary judgment
14 motion be extended to May 7, 2007. (Dkt. #220 at 5). In addition, plaintiff also argues in his
15 motion for reconsideration that he needs this extension in order to (A) file a motion to compel; and
16 (B) depose a non-defendant, Julia Garret. (Dkt. #220, at 6-8).

17 Defendants state in their response to plaintiff's motion for reconsideration that they do not
18 oppose granting plaintiff additional time to prepare his response to their pending motion for
19 summary judgment. (Dkt. #225 at 2). Surprisingly, defendants do not address a troublesome
20 issue that underlies plaintiff's request for additional time: the accuracy and admissibility of
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22 emergency motions. *See* Local Rule CR 7. Accordingly, by default, the emergency motion should
have been noted for the third Friday after it was filed, or February 9, 2007. *See* Local Rule CR
7(d)(3).

01 plaintiff's own transcription of the deposition testimony. Unlike a court reporter's transcription,
02 plaintiff's own transcription would not be an official record of the deposition testimony and
03 therefore would not be admissible in court, nor even as part of a response to defendants' summary
04 judgment motion. Consequently, granting plaintiff additional time to prepare the transcripts would
05 not aid his cause. It seems that at this stage, plaintiff's only option, if he wants to refer to portions
06 of the deposition testimony in his response to defendants' summary judgment motion, would be
07 to present such testimony through his own affidavit, attesting to the fact that a particular deponent
08 made a particular statement. Defendants would, of course, then be free to dispute the accuracy
09 of plaintiff's affidavit by citing to their own transcript of the deposition.³

10 Therefore, because it would not help him prepare his response to the pending summary
11 judgment motion, the court DENIES in part plaintiff's request for a further extension of time.
12 Recognizing that he has expended valuable time disputing this issue, the court GRANTS plaintiff
13 two additional weeks to file his response. Plaintiff's response is now due no later than **March 26,**
14 **2007.** The Clerk shall REOTE defendants' motion for summary judgment for consideration on
15 **March 30, 2007.** No further extensions shall be granted absent extraordinary circumstances.

16 (2) Regarding plaintiff's request to un-seal the exhibits filed by defendants in support
17 of the motion for summary judgment, defendants state in their response to plaintiff's motion for
18 reconsideration that they have no objection to un-sealing the exhibits. (Dkt. #225 at 2-3).
19 Defendants' sole concern is the distinction that plaintiff makes between certain exhibits and others,
20 which plaintiff argues should remain sealed because they are his own artwork and that,

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22 ³ The court presumes that defendants had the deposition testimony preserved by a court reporter and that they have prepared their own transcripts, or are at least capable of doing so.

01 consequently, he should be able to control who views them. (Dkt. #216 at 12). Defendants
02 contend that plaintiff's desires as an artist are not relevant to the question of whether the
03 documents should be available for public viewing.

04 The court agrees with defendants that plaintiff's artistic interest in controlling who may
05 view his artwork is not relevant when, as here, the artwork is the subject of a lawsuit. In addition,
06 the court will not engage in a comparison of the various exhibits, which are voluminous, to
07 determine whether their similarity should compel equal treatment. In sum, plaintiff has not shown
08 that the original Order sealing the exhibits was in manifest error, and therefore, the court DENIES
09 that part of plaintiff's motion for reconsideration that requests that the exhibits be un-sealed.

10 (3) Plaintiff's motion for stenographic services (Dkt. #221) is DENIED. The
11 expenditure of public funds on behalf of an indigent litigant is proper only when authorized by
12 Congress. *See Tedder v. Odel*, 890 F.2d 210 (9th Cir. 1989). The *in forma pauperis* statute, 28
13 U.S.C. § 1915, does not authorize the expenditure of public funds for the purpose of providing
14 stenographic services.

15 (4) Plaintiff's emergency motion for "court intervention" essentially reiterates the same
16 arguments made by plaintiff in his motion for reconsideration regarding his need for additional time
17 and his need to depose Julia Garret. Plaintiff's request to depose Julia Garret is opposed by
18 defendants on the grounds that the period for discovery expired in October, 2006, and that, in
19 addition, plaintiff has not complied with Rule 45 of the Federal Rules of Civil Procedure,
20 governing the service of subpoenas. (Dkt. #219 at 2). In particular, defendants point out that
21 plaintiff has not personally served Ms. Garret with a subpoena, together with witness and mileage
22 fees. (Dkt. #219 at 2). Ms. Garret, the court notes, has been served by mail with a subpoena, as

01 were the other witnesses whom plaintiff deposed. (Dkt. #224, Ex. H).

02 Plaintiff responds to defendants' arguments by reciting at length his efforts to depose Ms.
03 Garret and his numerous attempts to communicate with counsel for defendants on this matter.⁴
04 (Dkt. #224 at 1-8). Plaintiff further asserts that because all of his depositions in this case have
05 been conducted over the telephone, that mileage and witness fees are not necessary. (Dkt. #224
06 at 8-9). Defendants have not responded to these particular assertions by plaintiff.

07 In light of plaintiff's efforts to depose Ms. Garret in the past, the difficulties posed by his
08 *pro se* status, and the importance of rapidly concluding all discovery matters in this case,
09 defendants are directed to assist plaintiff in setting up the telephonic deposition of Ms. Garret, to
10 occur within 14 days from the date of this Order.

11 (5) In their motion for a protective order, defendants argue that Ms. Garret, as a
12 member of the Indeterminate Sentence Review Board ("ISRB"), is protected by quasi-judicial
13 immunity and accordingly, should not be made to answer questions by plaintiff about her reasons
14 for denying plaintiff parole in the past. (Dkt. #204 at 3). Rather, defendants contend that Ms.
15 Garret may be asked only "fact questions about what was received or what actions were taken by
16 the ISRB." (*Id.*)

17 However, defendants cite no authority for the proposition that Ms. Garret's immunity from
18 suit extends to immunity from testifying. In addition, if certain questions posed by plaintiff are
19 viewed as improper by defendants, they may follow the usual practice of objecting on the record

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21 ⁴ Plaintiff also contends that the court should not consider defendants' argument because
22 their response was filed too late. (Dkt. #224 at 5). In making this argument, however, plaintiff
misapprehends how time is computed under the Federal Rules of Civil Procedure. *See* Fed. R.
Civ. P. 6(a). Under these rules, defendants' response was timely and will be considered by the
court.

01 and later having that objection considered by the court, if necessary. For these reasons,
02 defendants' motion for a protective order (Dkt. #204) is DENIED.

03 (6) The Clerk is directed to send a copy of this Order to plaintiff, to counsel for
04 defendants, and to the Honorable John C. Coughenour.

05 DATED this 12th day of February, 2007.

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07 Mary Alice Theiler
08 United States Magistrate Judge
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